

Executive Registry

88-0721X

THE WHITE HOUSE

WASHINGTON

OCA FILE

February 18, 1988

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Dear Mr. Struve:

Thank you for your letter of February 9 requesting that each interested department or agency in the national security community make available to the Office of Independent Counsel an individual knowledgeable about national security concerns that might be implicated in connection with possible criminal prosecutions in the Iran-Contra matter. Consistent with the "Attorney General's Guidelines for Prosecutions Involving Classified Information," issued on June 10, 1981 by Attorney General William French Smith pursuant to the Classified Information Procedures Act of 1980 Section 12(a), 18 U.S.C. App. § 12(a), we are pleased to cooperate with your office by consulting and providing advice "to identify and assess these competing interests [regarding the disclosure of classified information] so that a reasoned decision may be made" at the pre-indictment stage. *Id.* at p. 2. Accordingly, please be advised that the following individuals have been designated by the national security community agencies, departments or offices indicated:

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<u>Department, Agency or Office</u>	<u>Names</u>
1. Department of State	1a. Dennis I. Foreman b. Robert Harris
2. Department of Defense	2a. Maurice White
3. Central Intelligence Agency	3a. <div style="border: 1px solid black; width: 150px; height: 30px;"></div> b. <div style="border: 1px solid black; width: 150px; height: 30px;"></div>
4. National Security Agency	4a. <div style="border: 1px solid black; width: 150px; height: 30px;"></div> b. <div style="border: 1px solid black; width: 150px; height: 30px;"></div>
5. National Security Council	5a. Jay B. Stephens b. William B. Lytton, III

I also am advised by Assistant Attorney General William F. Weld that the Department of Justice and the Federal Bureau of Investigation wish to participate in this process because classified information has been provided to your investigation by the Justice Department and the FBI, and that

their respective designated representatives would be Edward J. Walsh, Criminal Division, Department of Justice, Lubomyr M. Jachnycky, Office of Intelligence Policy and Review, Department of Justice, and Ronald F. Klein, Supervisory Special Agent, FBI. In addition, if it becomes apparent that national security concerns within the province of any other agencies are implicated, we believe that representatives of any such agencies should likewise have an opportunity to be consulted and provide their advice.

We believe that the designated agency representatives should meet as a committee for the purpose of identifying and assessing, together with the Independent Counsel, the national security implications raised in possible indictments and related evidentiary material or other material associated with possible prosecutions. We trust that the Office of Independent Counsel will advise relevant agencies and, in particular, the designated agency representatives, where it foresees potential problems regarding the protection of classified information and national security interests. The agencies and individuals involved will be relying on the Independent Counsel's assistance and cooperation in identifying and assessing these issues. We obviously share your interest in avoiding potentially damaging public disclosures of classified information.

As requested by your office, each such designated agency representative will be instructed in writing by his or her department, agency or office that, in accordance with Rule 6(e) of the Federal Rules of Criminal Procedure, no matters occurring before the grand jury learned by such individual as a result of his or her consultations with your office may be divulged to any person outside the Office of Independent Counsel, except as permitted under Rule 6(e) and cleared with the Independent Counsel.

Consistent with established practices in this area, we believe that arrangements should be formalized to provide for consultation with appropriate agency officials where there is a need for further information or clarification, or in the event of any disagreement between a designated agency representative and the Independent Counsel concerning the national security implications of a proposed course of action. We anticipate that issues regarding the protection of national security interests will, as they arise, be framed in a manner that does not contravene the grand jury secrecy provisions of Rule 6(e), but permits discussion of that issue with the appropriate agency officials for the purpose of resolving or clarifying the implication for national security.

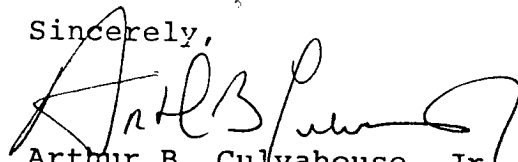
Director of Central Intelligence William Webster and I would be pleased to meet with Judge Walsh to discuss structuring this consultative process so that the interests of national security, federal criminal law enforcement and the needs of

the Independent Counsel are well served. For example, in cases where a disagreement cannot be resolved among the designated agency representatives and the Office of the Independent Counsel, the relevant national security issue could be discussed confidentially between your office and the appropriate agency officials. If this process does not lead to a resolution of the competing interests, the issue could then be raised for the consideration of Judge Walsh and the relevant agency head or other appropriate authority. We anticipate that there will be few occasions, if any, when the designated agency representatives will not be able to reach agreement with the Office of Independent Counsel in the first instance.

Given the circumstances posed by an independent counsel investigation involving exceedingly sensitive national security information, we recognize and appreciate the Office of Independent Counsel's stated interest in obtaining the "maximum possible input" from the national security community at this early stage. As has been discussed with representatives of the Independent Counsel, the designation of the individuals identified above is not a waiver of or replacement for applicable consultation requirements and authorities under established Department of Justice policies, agreements between the Department of Justice and relevant departments or agencies relating to disclosure of classified information, the Classified Information Procedures Act, or any other provisions of law or regulation.

Please feel free to consult with me or with appropriate officials in the relevant agencies as often as necessary to assure a mutually satisfactory arrangement reflecting all of these important considerations. Thank you again for your interest.

Sincerely,



Arthur B. Culvahouse, Jr.
Counsel to the President

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cc: The Honorable William H. Webster ✓